Supreme Court, U.S.
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No. 96-1343

In the
Supreme Court of the United States
October Term, 1996

SECTION 28 PARTNERSHIP, LTD.,
a Florida Limited Partnership,

Petitioner,

v.

MARTIN COUNTY, FLORIDA,

a Political Subdivision of the State of Florida,

Respondent,

On Petition for Writ of Certiorari to the
Fourth District Court of Appeal for the State of Florida

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

JURISDICTION

This court has no jurisdiction over the Petition for Certiorari because: (a) the matter is moot because the trial court reversed its finding of a taking on the merits on October 25, 1996;
(b) the trial court's 1996 decision on the taking lacks finality, because a motion for rehearing on the petitioner's motion to amend the remedy is pending, and because it is unclear whether an appeal will be filed to the Florida Fourth District Court of Appeal by the petitioner; and (c) the petition exclusively addresses a supplemental holding from the Florida Fourth District Court of Appeal's decision. In support of these points, Respondent presents the Court with the following brief.

STATEMENT OF THE CASE

This case arose out of a legislative decision by Martin County not to amend its comprehensive plan guiding development in the County, as the petitioner had requested in order to allow it to seek rezonings and a planned unit development approval for approximately one square mile of land in the County. (A-3, petition) The petitioner sought to develop the land with over four times the amount of development permitted under the County's comprehensive growth management plan. See Section 28 Partnership, Ltd. v. Martin County, 642 So. 2d 609, 612 (Fla. 4th DCA 1994), rev. den., 654 So. 2d 920 (Fla. 1995).

The trial court determined that the County's actions violated the petitioner's substantive due process rights, and awarded $100,000 in damages. (C-5 and C-6, petition) It also

initially determined that a conditional staff recommendation, for a buffer area to be required if the planned unit development approval were considered and approved by the County Commission, constituted a taking of the land suggested for buffer uses, and awarded another $100,000 in damages. (C-5 and C-7) The trial court specifically stated that the only taking it found was in the buffer requirement. (An excerpt of the hearing on final judgment, dated July 14, 1994, is reproduced as App. A.)

The Fourth District Court of Appeal reversed the taking decision on its merits because it was based on a conditional staff recommendation, and thus "somewhat illusory". (A-8 and A-9) It also stated that it considered the same buffer issue moot because the comprehensive plan amendments were never enacted, because the County Commission never addressed the rezoning approvals involving the recommendation for a buffer, and because it was reversing the trial court's order approving the planned unit development. (A-8 and A-9) The Fourth District specifically stated that there were "unreasonable economic uses " available for Section 28. (A-9)

In a supplemental holding, the Fourth District also referred to the petitioner's claim in that appeal that the trial court's fining of a taking went beyond the buffer. By not finding in favor of the petitioner on this claim and by limiting the taking to the buffer in the text of the 1994 final judgment (petition, Appendix C), the trial court rejected this claim. The Fourth District assumed for the sake of argument that such an additional taking claim was before it, and discussed its view of the ripeness of the assumed claim. (A-9 and A-10) The Supreme Court of Florida denied review of the Fourth District's decision. (B-1, petition)

REASONS FOR DENYING THE WRIT

The petitioner's Questions Present for Review are entirely directed towards the supplemental holding concerning ripeness. However, regardless of this supplemental holding, the Fourth District held that the taking issue was moot and illusory, having never been addressed by the County Commission. The petitioner thus improperly invites this Court to issue a speculative and advisory opinion on ripeness issues in the absence of an actual "controversy essential to the decision of the particular case before it". United States v. Alaska S.S. Co., 253 U.S. 113, 116 (1920) (finding mootness).

Ripeness in the sense of the petitioner's Questions Presented for Review is a substantive requirement applicable to taking claims, and the courts will not find there has been any concrete injury in its absence. See, e.g., Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 193 (1985). However, even if this substantive ripeness issue were properly before this Court, the petition is procedurally premature in another sense.

The trial court considered the remand of this case and reversed the earlier decision that there was a taking, regardless of whether the taking claim was ripe. A written order on remand was entered on October 25, 1996. (The Order is reproduced as App. B) The trial court denied the petitioner's motion to modify the remedy orally on January 31, 1997, and issued its order on March 3, 1997. The petitioner has just filed a motion for rehearing on the motion to modify the remedy. All counsel have duty to bring such circumstances outside the trial record to the attention of this Court through all phases of review. Board of License Commissioners of the Town of

Tiverton v. Pastore, 469 U.S. 239, 240 (1985); Fusari v. Steinberg, 419 U.S. 379, 390-91 (1975) (Burger, J. concurring); and Alaska, 253 U.S. at 116.

ARGUMENT

The primary function of this Court has never been error correction. Rather, this Court's function is to develop the law in appropriate cases. There is no appellate or certiorari jurisdiction under 28 U.S.C. § 1257 where there is no final judgment in the state court. San Diego Gas & Electric Co. v. City of San Diego, 450 U.S. 621, 630 and n.10 (1981). As Justice Rehnquist recognized in his concurring opinion, id. at 633-36, regardless of whether there is disagreement regarding the issues remaining for remand under the flexible approach of Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975), it is prudent for the Court to refrain from exercising discretionary jurisdiction to develop the law when the nature of the judgment below is unclear.

Finality serves several important ends. It avoids piecemeal federal review of state court decisions; avoids the giving of advisory opinions in the absence of an Article III case or controversy; and limits federal review of state court determinations in order to minimize federal intrusion into state affairs. See North Dakota Pharmacy Board v. Snyder's Stores, 414 U.S. 156, 159 (1973).

In a civil case, speculative contingencies which might conceivably affect the substantial rights of interested parties, but are not real and immediate, are simply not enough to establish jurisdiction. Tiverton, 469 U.S. at 242; and DeFunis

v. Odegaard, 416 U.S. 312, 320, n.5 (1974). The trial court on remand in the instant case revisited the substantive taking questions *sua sponte* and reached a different result, regardless of substantive ripeness. The petitioner's motion for rehearing on its motion to modify the remedy is pending. Thus, there is no finality as to ripeness, liability or damages on the taking claim. Exercising certiorari over this case is thus beyond the Court's jurisdiction under § 1257, and will result in an advisory opinion.

Moreover, the "capable of repetition yet evading review" exception to the application of mootness does not apply. See DeFunis, 416 U.S. at 318-19. The petitioner admits in the Questions Presented for Review that it no longer has control over any of the properties affected by the County's decision. Thus, the taking claim is not capable of repetition, because the petitioner no longer has any standing to raise additional taking challenges premised on these properties. Compare id. and Valley Forge College v. Americans United, 454 U.S. 464, 474-75 (1982).

Furthermore, the ripeness issue is also procedurally premature for yet another reason: the petitioner has the opportunity to file an appeal from the trial court's taking decision on remand. In order to grant certiorari, this Court would have to pile assumption upon speculation to find that: (a) an appeal will be filed from the remand; (b) the appeal will address the taking issue; (c) the Florida Fourth District Court of Appeal will issue a decision that reasserts its language concerning ripeness from the first appeal as the basis of its decision; and (d) the Florida Supreme Court will again deny discretionary review, or decide the case in a manner that permits these ripeness issues to return to this Court. Identifying these cumulative assumptions demonstrates that

this petition does not present justiciable issues. See Valley Forge, 454, U.S. at 472; and Stern et al, Supreme Court Practice, p. 707ff (7th Ed. 1993). Denial of certiorari is therefore appropriate. Velsicol Chemical Corp. v. U.S., 435 U.S. 942 (1978).

The petitioner will not be substantially prejudiced by the denial of certiorari, because this Court retains jurisdiction to review the 1996 Fourth District decision in any future attempt by the petitioner to seek Supreme Court review, after the conclusion of the proceedings on remand and any state appellate review of those proceedings. Hughes Tool Co. v. Trans World Airlines, 409 U.S. 363, 365 n.1 (1973); and Barclay v. Florida, 463 U.S. 939 (1983) (even where the state court treats the earlier holding as the law of the case, the earlier holding remains susceptible to Supreme Court review).

Finally, if it should appear to this Court that the petition is justiciable despite the above issues, the County would be glad to provide a complete brief in opposition for the Court's consideration. The County strongly believes that the Fourth District's decision is correct on all legal and factual points, and disagrees with the petitioner's presentation of the case to this Court. In particular, the County disagrees with the petitioner's suggestion that the Suitum case, currently under consideration in this Court, is factually or legally similar to the instant case.

CONCLUSION

Therefore, it appears that the petitioner's application for a writ of certiorari is not justiciable and should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A
NOT FOR PUBLICATION

IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT IN AND FOR
MARTIN COUNTY, FLORIDA

CASE NO. 92-569 CA

SECTION 28 PARTNERSHIP, LTD.,
a Florida limited partnership,

Plaintiff,

vs.

MARTIN COUNTY, FLORIDA,

Defendant.

TRANSCRIPT OF PROCEEDINGS

This cause came on for hearing before the Honorable Thomas O'Connell, Judge of the Circuit Court, at the St. Lucie County Courthouse Annex, Port St. Lucie, Florida, beginning on the 14th day of July, 1994, at 9:45 a.m.

The appearances at said time and place were as follows:

For the Plaintiff: SIEMON, LARSEN & MARSH
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For the Defendant: BURKE, WEAVER & PRELL
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COUNTY ATTORNEY'S OFFICE
NOREEN DREYER, COUNTY ATTY.
BY: NOREEN DREYER, ESQ.
and GARY OLDEHOFF, ESQ.
2401 S.E. Monterey Road
Stuart, FL 34996

[from page 30 of transcript]

...

opposed to this more general conclusion of law which we don't believe is based on the evidence.

MR. SIEMON: Your Honor, I would submit that it's based on the evidence. And, Your Honor, while the Court called out particular attention to the agricultural ranchette language, there are three classifications which are currently applied to the property. This Court has indicated that its intent is that there be a density of not less than 638 units. And I believe it's appropriate to identify each of the classifications which the Court is overruling.

So I don't believe that there's been any liberty taken in responding to this Court's announced order, and I would encourage the Court to enter the language as it appears in Paragraph 9.

THE COURT: Well, I'm going to leave Paragraph 9 as it is, in tact (sic). Which takes us to Number 10. 300-foot buffer.

MS. STROUD: The 300-foot buffer. Your Honor, the paragraph here we believe is objectionable in that it references the buffer not necessary to mitigate an adverse impact and not an appropriate condition precedent to development approval. Again, we believe that goes beyond the evidence. The plaintiff's only expert said that the buffer might be a good idea. It was a matter of whether the County should pay it. And bringing in this idea of not necessary to mitigate an adverse impact or not appropriate condition precedent to a development approval raises a question of whether any buffer would be permitted and whether it was

at all necessary. His own expert, Mr. Irwin (sic), said that a buffer is good. He supported a buffer and designed a buffer.

THE COURT: There's no doubt. I'm not in disagreement with a buffer. I'm in disagreement as to who should pay for it.

MS. STROUD: And Your Honor's original pronouncement said that clearly. This goes beyond that. So we would suggest in the fourth line striking "which is not necessary to mitigate an adverse impact", and then striking the remainder of the sentence.

THE COURT: Well, I don't believe it's necessary to mitigate an adverse impact. Because this is — the property directly to the west of this area is really not part of Jonathan Dickinson State Park, it's part of the river corridor or area which has been utilized by the park. And it was donated by McArthur if my memory — The land was donated and now the County wants to take more and create a berm is what they wanted to do.

MS. STROUD: Well, the PUD as proposed, Your Honor, would create a berm. If the PUD is supposed to be approved by normal rules and regulations of the County. And to assume that the County is somehow going to act in bad faith is unfair. We certainly are aware of the Court's decision and would indeed have more incentive to act in good faith.

THE COURT: All right. I'm going to leave — the only change is the one that I've made with the 638 units for the total section, as to 1. And that will be it.

Number 2. That's $100,000 against Martin County. I feel that was almost nominal damages under the circumstances.

MS. STROUD: We --

MR. SIEMON: Excuse me, Your Honor, I was --

THE COURT: Okay.

MR. SIEMON: I did not mean --

THE COURT: I'm not going to increase it.

MS. STROUD: Your Honor, I believe we've already talked about the federal claims and that's an issue I had on this sentence, that it should be limited to state claims and not embellished or added on to in terms of federal claims. The same in Paragraph 4, Your Honor.

THE COURT: I'm going to leave 2 and 4 as they are.

MS. STROUD: Your Honor, in 4 the taking is a bit unclear to us and we wonder based on your earlier judgment whether this is for the uncompensated taking of the 300-foot buffer? Is it limited to that? That's what we understand the taking --

THE COURT: It's for the taking --

MS. STROUD: Of the 300-foot --

THE COURT: — is what it's for. Buffer.

MS. STROUD: Of the 300-foot buffer? If Your

Honor would make that clear by adding after Martin County "for it's (sic) uncompensated taking" of the 300-foot buffer.

THE COURT: I'm going to cross out the word "and" at the end and insert "for its unlawful taking."

MS. STROUD: Of the buffer, Your Honor?

THE COURT: Unlawful taking. That will spell it out.

MS. STROUD: Okay. Is that, Your Honor, because the conclusion is already earlier referencing the buffer?

THE COURT: Yes, it does.

MS. STROUD: And in Paragraph 5, Your Honor, the words that are a problem here are the "substantially prevailing party" words. That is something Your Honor can decide in an attorney's fee hearing. It's not necessary.

THE COURT: The most recent suggestion by the Supreme Court is to send it back to the trial judge to determine who is the prevailing party. Now, that's the latest expression of the Supreme Court as far as prevailing is concerned. I have been in this bind many times, and I'll have to make that decision. I would say at this point that the ...

CERTIFICATE

STATE OF FLORIDA)
) : SS
COUNTY OF MARTIN)

I, LAURA E. MELTON, Registered Professional Reporter and Notary Public of the State of Florida at Large, do hereby certify that in the matter of SECTION 28 PARTNERSHIP, LTD. vs. MARTIN COUNTY, FLORIDA, Case No. 92-569 CA, a hearing was held before the Honorable Thomas O'Connell, beginning at the hour of 9:45, on the 14th day of July, 1994; that I was authorized to and did report in shorthand the proceedings in that hearing, and that the foregoing pages numbered 2 through 41 comprise a true and correct transcript of those proceedings.

IN WITNESS HEREOF I have hereunto affixed my hand this 29th day of July, 1994.

/s/ Laura E. Melton

APPENDIX B
NOT FOR PUBLICATION

IN THE CIRCUIT COURT OF
THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY
CASE NO. 92-569-CA

SECTION 28 PARTNERSHIP, LTD.,
a Florida limited partnership,

Plaintiff,

vs.

MARTIN COUNTY, FLORIDA

Defendant.

FINAL JUDGMENT ON REMAND

THIS CAUSE is again before the Court, this time on remand from the Fourth District Court of Appeal by virtue of the Opinion of the Court of Appeal dated July 17, 1996 and the Mandate issued by the Court of Appeal on August 2, 1996. This Court has jurisdiction and does hereby enter the following final judgment on remand which is intended to affirm and clarify the Court's initial July 14, 1994 final judgment:

This case involves Martin County, Florida's (the "County's") repeated refusal to allow a property owner, Section 28 Partnership, Ltd., (the "Partnership"), to develop a parcel of land known as "Section 28" with any reasonable, economically viable use. Over a course of approximately 13 days, this Court considered the testimony of more than 30 witnesses and received

over 200 exhibits into evidence. Counsel for both parties was permitted to make extensive legal argument which included the appropriate standard of review and application of that standard to the evidence.

In connection with the Court's consideration of the testimony and documentary evidence over a period of 13 days, the Court had occasion to, and did, weigh and judge the competency and credibility of the witnesses and other evidence presented. In so doing, this Court specifically concluded that the County's refusal to allow the Partnership to develop Section 28 at an economically viable density and the County's continued application of irrational land use designations on this Section 28 was not "fairly debatable," and was, in fact, arbitrary and capricious and effected a taking without payment of compensation. As was the case in Rural New Town, Inc. v. Palm Beach County, 315 So. 2d 478 (Fla. 4th DCA 1975):

> the quality and character of the evidence presented by [the Partnership] was of such magnitude as to remove the continued applicability of the existing zoning classification from the "fairly debatable" category.

Rural New Town, 315 So. 2d at 479.

Thus, this Court affirms its July 14, 1994, final judgment and incorporates the findings of fact and conclusions of law and relief ordered therein. Additionally, in order that the basis for the Court's judgment be absolutely clear for the purposes of an additional appeals, the Court makes the following supplemental findings of fact and conclusions of law and orders granting relief to the Partnership:

SUPPLEMENTAL FINDINGS OF FACT

1. The Partnership, or its predecessors in interest, applied to the County three separate times in an attempt to develop Section 28. The first application was in 1990 and was denied. The second application was in 1991 and was denied. The only competent and credible evidence at trial was that the 1990 and 1991 applications sought the minimum economically viable density for the development of Section 28 and were both denied even though both applications complied with all of the applicable County regulations and posed no health, safety or welfare concerns.

2. The County advanced some testimony that Section 28 could somehow be reasonably be used for farming and large lot single-family home development, however such evidence was incompetent and not credible and was otherwise contradicted by economic analysis which demonstrated that such uses were not economically viable on Section 28.

3. After the Partnership's two 1990 and 1991 applications were denied, the Partnership lost control of the entirety of Section 28 due to the County's wrongful actions. However, in an effort to mitigate its damages, the Partnership received approval on a third application, a so-called "by-right" application, which sought to develop a portion of Section 28 which the Partnership still owned under the existing land use designations. The only competent and credible evidence at trial was that the development approved by the County on this portion of Section 28 was not economically viable and that Section 28 has not been developed, and is not developable, pursuant to this "approval".

4. The Partnership's 1991 PUD application requested a

range of densities from 1.07 to 1.27 units to the acre. At the request of the county, the Partnership dropped the density to the lower range of only 1.07 units to the acre.

5. The character of the neighborhood in which Section 28 is located is suburban and urban residential and non-residential in nature.

6. Section 28 is adjacent to the Jonathan Dickenson State Park ("JDSP") only along the northern border of the west half section of the property. In fact, the Partnership's predecessor in interest donated 900 acres to the Save Our Rivers Program which was considered an adequate buffer for the entire length of the western side of Section 28 and the nearby Loxahatchee River.

7. Numerous competent and credible expert witnesses testified that the Partnership's requested development was consistent with the County's comprehensive plan. In fact, the density proposed by the Partnership adjacent to JDSP was one unit to every two acres, completely consistent with the existing land use designation under the County's comprehensive plan.

8. Indeed, the only competent and credible testimony at trial was that the existing land use designations on Section 28 are wholly irrational and are inconsistent themselves with the County's comprehensive plan which requires those designations to be changed. The County's own professional staff admitted that the land use designations on Section 28 were inappropriate and should have been changed. Finally, the County's own Growth Management Director testified that the land use designations on Section 28 were an "anomaly" and "totally irrational."

9. The only competent and credible testimony at trial was that there is no correlation between high density development and any negative impact on JDSP. The County's own expert witness testified that the area of greatest bio-diversity in JDSP was immediately adjacent to residential development with a density 20 times that proposed by the Partnership.

10. The County employs an "urban services boundary" as a growth control tool, yet the County's own professional staff admitted at trial that the boundary is not based on any planning rationale. The only competent and credible evidence at trial was that the County's urban services boundary is irrational and actually contributes to, rather than prevents, urban sprawl.

11. Public water and sewer are available to Section 28 within 1/4 of a mile and a matter of physical fact, but the County prohibits the use of water and sewer on Section 28. The County prohibits such logical extension of utilities because Section 28 is not included within the urban services boundary; however, the County's comprehensive plan and state law require hook-up where services are available within 1/4 of a mile. The County's own professional staff and Growth Management Director admitted that the development of Section 28 with well and septic would be environmentally undesirable and the other competent and credible testimony at trial was that the prohibition of public utilities on Section 28 is wholly irrational and contrary to sound planning.

12. The Partnership had a clear entitlement to the approval of its 1990 and 1991 applications and the change of the land use designations on Section 28 pursuant to the County's comprehensive plan and all other applicable regulations.

13. Finally, the overwhelming evidence at trial was that the County will continue to interfere with, and most likely prevent, the Partnership from achieving any economic return on Section 28 without Court intervention. The uncontradicted and only competent and credible testimony at trial was that the Partnership had lost $7 million in its attempts to develop Section 28 due to the County's wrongful interference with those efforts.

SUPPLEMENTAL CONCLUSIONS OF LAW

14. The Partnership's constitutional claims are ripe for review. The Partnership has submitted three formal applications to the County, including the last application which was pursuant to the existing regulations which themselves do not provide for any economically viable use to be made of Section 28. In any case, further applications to the County would have been entirely futile.

a. The land use designations on Section 28 deny the Partnership of all economically beneficial or productive use of its land;

b. The Partnership applied for alternative uses of Section 28 through its 1990 and 1991 applications and in a third application sought development approval under the existing regulations. The 1990 and 1991 applications were denied and the third application, though approved, does not provide the Partnership with any economically viable use; and

c. The Partnership's 1990 and 1991 applications were "meaningful" applications as was the third application submitted pursuant to the existing regulations.

15. Reasonable minds could not differ, nor is it fairly

debatable, that the existing land use designations on Section 28 are inconsistent with the County's comprehensive plan, are irrational, arbitrary and capricious and do not bear some substantial relationship to the public health, safety and welfare.

16. Reasonable minds could not differ, not is it fairly debatable, that the Partnership's 1990 and 1991 applications seeking development approval of Section 28 were completely consistent with the County's comprehensive plan and all other applicable regulations and that there was no public, health, safety or welfare rationale for the County's denial of those applications.

17. Reasonable minds could not differ, nor is it fairly debatable, that the County's actions is maintaining the existing land use designations on Section 28 and denying its two applications do not substantially advance a legitimate government purpose.

18. State law requires that land use designations be consistent with a duly enacted comprehensive plan and the land use designations on Section 28 are inconsistent with the County's comprehensive plan and are required to be changed.

19. State law requires that Section 28 be hooked up to public water and sewer because it is within 1/4 of a mile from an available line. Thus, the County's comprehensive plan which situates Section 28 outside of the urban service district is in conflict with state law.

20. The County's continued application of its existing comprehensive plan and land development regulations to Section 28 fails to substantially advance a legitimate government purpose.

21. The County's denial of the Partnership's 1990 and 1991 applications for development approval was arbitrary and capricious and failed to substantially advance a legitimate governmental purpose.

22. The Partnership has a property interest in the approval of its 1990 and 1991 applications and the change of the land use designations on Section 28.

23. The County's denial of the Partnership's 1990 and 1991 applications deprives the Partnership of all economically viable use without payment of compensation as those applications sought minimum economically viable density for Section 28.

24. The County's continued application of the land use designations on Section 28 deprives the Partnership of an economically viable use without payment of compensation.

25. The Partnership is a substantially prevailing party in this action.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Court finds in favor of the Partnership on Count I of the First Amended Complaint;

a. The County's denial of the Partnership's 1990 and 1991 applications and continued application of the land use designations on Section 28 violates the Partnership's rights to substantive due process pursuant to the Constitution of the State of Florida, the Constitution of the United States and is a constitutional

tort pursuant to 42 U.S.C. § 1983;

b. The County's denial of the Partnership's 1990 and 1991 applications and continued application of the land use designations on Section 28 is irrational, arbitrary and capricious and does not bear some substantial relationship to the public health, safety and welfare; and

c. The Partnership is entitled to injunctive relief and money damages for the County's unconstitutional actions.

2. The Court finds in favor of the Partnership on Count III of the First Amended Complaint:

a. The County's denial of the Partnership's 1990 and 1991 applications and continued application of the land use designations on Section 28 does not substantially advance a legitimate government purpose;

b. The Partnership is entitled to injunctive relief.

3. The Court finds against the Partnership on Count II of the First Amended Complaint.

4. Money damages in the amount of $100,000 are awarded to the Partnership for the County's violation of the Partnership's due process rights. The Court reserves jurisdiction to alter the monetary awards should the injunctive relief awarded herein be determined to be inadequate.

5. The County is enjoined from enforcing any and all restrictions to or on Section 28 which are more restrictive than

one (1) unit per acre, unless otherwise agreed to by the parties. In connection with the foregoing, Martin County is enjoined from impeding or otherwise interfering with the development of Section 28 at a density of at least one (1) dwelling unit per acre and the installation of water and sewer for Section 28. Any ordinances, regulations or rules enacted by the County with regard to the development of Section 28 to the contrary are hereby rendered null and void. The County shall, within a reasonable time, consider and approve Plaintiff's application for planned unit development as submitted to the Board of County Commissioners on May 5, 1992 as if the Board of County Commissioners had amended the Martin County Comprehensive Plan to designate Section 28 in a land use classification which would permit one (1) dwelling unit per acre (for a total of 638 units on Section 28) and to designate Section 28 as a part of the primary urban service district.

6. This Court reserves jurisdiction to enforce this final judgment, to grant the Partnership as the substantially prevailing party its attorney's fees and costs pursuant to applicable law and to take such other actions as this Court deems appropriate.

FOR ALL OF WHICH LET EXECUTION ISSUE.

DONE AND ORDERED in Chambers in St. Lucie West, St. Lucie County, Florida on 25 October 1996.

/s/ Thomas G. O'Connell
Circuit Court Judge

cc: Charles L. Siemon, Esq., Siemon, Larsen & Marsh, 433 Plaza Real, Suite 339, Boca Raton, FL 33432.

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